

MONTANA LEGISLATIVE HISTORY

Chapter 503 1999

Bill H _____ S 462

Original bill & history ☒ c

H. Committee on Natural Resources

S. Committee on Natural Resources

Hearing Date(s) _____ c

Hearing Date(s) _____ c

3/15 _____ c

2/15 we _____ c

_____ c

_____ c

_____ c

_____ c

Date Out 3/22 _____ c

out 2/19 ✓

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HISTORY AND FINAL STATUS 1999

2/23	2nd Reading Passed	40	9
2/24	3rd Reading Passed	40	9
	Transmitted to House		
3/02	Referred to Natural Resources		
3/15	Hearing		
3/23	Committee Executive Action--Bill Concurred	15	5
3/24	Committee Report--Bill Concurred		
3/27	2nd Reading Concurred as Amended	59	40
3/30	3rd Reading Concurred	66	34
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	46	4
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/17	Signed by President		
4/20	Signed by Speaker		
4/20	Transmitted to Governor		
4/27	Signed by Governor		
4/29	Chapter Number Assigned		
	Chapter Number 503		
	Effective Date: 7/01/1999 - All Sections		

SB 463 Introduced by Wells

LC1518 Drafter: MacMaster

Provide That the State's Liability for Interest and Attorney Fees in a Judgment on a Contract, Provided for in Chapter 508, Laws of 1997, Is Retroactive to and Applies to Contracts in Effect on May 1, 1997, the Date on Which Chapter 508 Took Effect;...

1/06	Fiscal Note Needed		
2/12	Introduced and 1st Reading		
2/12	Referred to Judiciary		
2/16	Hearing		
2/17	Committee Executive Action--Bill Passed	8	0
2/17	Committee Report--Bill Passed		
2/20	2nd Reading Passed	46	0
2/22	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Judiciary		
3/23	Hearing		
3/26	Committee Executive Action--Bill Concurred	19	0
3/27	Committee Report--Bill Concurred		
3/30	2nd Reading Concurred	75	23
3/31	3rd Reading Concurred	76	22
	Returned to Senate		
3/31	Sent to Enrolling		
4/01	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/21	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 413		
	Effective Date: 4/21/1999 - All Sections		

SENATE BILLS AND RESOLUTIONS

257

2/11	Referred to Education and Cultural Resources		
2/11	Fiscal Note Requested		
2/17	Hearing		
2/23	Fiscal Note Received		
2/23	Fiscal Note Printed		
3/04	Revised Fiscal Note Requested		
3/12	Revised Fiscal Note Received		
3/13	Revised Fiscal Note Printed		
3/26	Committee Executive Action--Bill Passed as Amended	7	4
3/26	Committee Report--Bill Passed as Amended		
3/29	2nd Reading Passed as Amended	50	0
3/30	3rd Reading Passed	47	3
	Transmitted to House		
3/31	Referred to Appropriations		
4/07	Hearing		
4/07	Committee Executive Action--Bill Concurred as Amended	15	1
4/08	Committee Report--Bill Concurred as Amended		
4/10	2nd Reading Concurred	89	10
4/12	3rd Reading Concurred	95	4
	Returned to Senate with Amendments		
4/14	2nd Reading House Amendments Concurred	49	0
4/15	3rd Reading Passed as Amended by House	46	4
4/16	Sent to Enrolling		
4/19	Returned from Enrolling		
4/20	Signed by President		
4/21	Signed by Speaker		
4/22	Transmitted to Governor		
4/28	Signed by Governor		
4/29	Chapter Number Assigned		
	Chapter Number 514		
	Effective Date: 4/28/1999 - Sections 5 and 11		
	Effective Date: 7/01/1999 - Sections 1-4 and 6-10		

SB 461 Introduced by Glaser *LC0939 Drafter: MacMaster*

Revise the Power of Eminent Domain for Pipelines and Other Delivery Systems;...

2/11	Introduced and 1st Reading
2/11	Referred to Judiciary
2/16	Hearing
2/17	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

SB 462 Introduced by Grosfield, et al. *LC1141 Drafter: Everts*

Generally Authorize Environmental Control Easements;...

2/12	Introduced and 1st Reading		
2/12	Referred to Natural Resources		
2/12	Fiscal Note Requested		
2/15	Hearing		
2/19	Fiscal Note Received		
2/19	Fiscal Note Signed		
2/19	Fiscal Note Printed		
2/22	Committee Executive Action--Bill Passed as Amended	10	1
2/22	Committee Report--Bill Passed as Amended		

1 SENATE BILL NO. 462
2 INTRODUCED BY Groffred James R. T. Allen Yount
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY AUTHORIZING ENVIRONMENTAL CONTROL
5 EASEMENTS; ALLOWING THE ACQUISITION OF ENVIRONMENTAL CONTROL SITES; LIMITING THE
6 CONVERSION OR DIVERSION OF ENVIRONMENTAL CONTROL SITES FROM THE PURPOSES SPECIFIED
7 IN THE ENVIRONMENTAL CONTROL EASEMENT; RESTRICTING THE CONVEYANCE OR LEASE OF
8 ENVIRONMENTAL CONTROL SITES; AUTHORIZING PUBLIC BODY POWERS IN CONNECTION WITH
9 ENVIRONMENTAL CONTROL EASEMENTS; PROVIDING FOR THE CREATION AND APPROVAL OF
10 ENVIRONMENTAL CONTROL EASEMENTS; SPECIFYING THE DURATION OF ENVIRONMENTAL CONTROL
11 EASEMENTS; PROVIDING FOR PERMISSIBLE EASEMENTS; DESIGNATING GRANTEEES OF
12 ENVIRONMENTAL CONTROL EASEMENTS; AUTHORIZING THE ASSIGNABILITY OF EASEMENTS;
13 PROVIDING FOR COORDINATION WITH LOCAL PLANNING AUTHORITIES; REQUIRING THE RECORDING
14 AND DESCRIPTION OF ENVIRONMENTAL CONTROL EASEMENTS; EXEMPTING CERTAIN INTEREST HELD
15 BY A GRANTEE FROM PROPERTY TAXES; PROVIDING FOR EASEMENT ENFORCEMENT AND LIABILITY;
16 AND PROVIDING AN EFFECTIVE DATE."

17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19

20 NEW SECTION. Section 1. Short title. [Sections 1 through 19] may be cited as the
21 "Environmental Control Easement Act".

22

23 NEW SECTION. Section 2. Findings and purpose. (1) The legislature finds that:

24 (a) numerous sites throughout the state contain or may contain hazardous wastes or substances
25 that may threaten the public health, safety, or welfare or the environment if certain uses are permitted
26 on these sites or if certain activities are not performed on these sites;

27 (b) at some sites, protection of the public health, safety, or welfare or the environment may be
28 enhanced by the application and enforcement of certain restrictions on the future use of the site or
29 requirements for performance of certain activities;

30 (c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a

1 site and requiring performance of operations and maintenance activities may help protect the public
2 health, safety, and welfare and the environment by:

3 (i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

4 (ii) preventing the disturbance of important features of remediation work and remedial technologies
5 employed at the site;

6 (iii) ensuring that the presence of hazardous wastes or substances and the features of remediation
7 work and remedial technologies are properly considered in the future use or development of a site; or

8 (iv) requiring the performance of certain activities or the prohibition or limitation of certain
9 activities, with respect to the site; and

10 (d) the expenditure of public funds for the acquisition or designation of interests and rights in real
11 property to protect the public health, safety, and welfare and the environment is in the public's interest.

12 (2) It is the purpose of [sections 1 through 19] to authorize and enable federal public entities, other
13 public bodies, and certain qualifying private organizations to provide for:

14 (a) the monitoring and protection of environmental control sites to ensure that those sites are not
15 used for purposes that may threaten the public health, safety, or welfare or the environment;

16 (b) a process of reviewing the need for specialized construction, development, use, and safety
17 measures if the owner or user of an environmental control site proposes a new use for which any
18 contamination might present a risk to the public health, safety, or welfare or the environment; and

19 (c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an
20 environmental control site to enhance protection of the public health, safety, or welfare or the
21 environment.

22

23 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 19], the following
24 definitions apply:

25 (1) "Department" means the department of environmental quality provided for in 2-15-3501.

26 (2) "Environmental control easement" or "easement" means an easement running with the land
27 that is assignable by a grantee of an environmental control site and that is binding on the owner and
28 subsequent owners, lessees, and other users of the land. The easement may require the relinquishment
29 of some or all rights to use the land or its surface or subsurface or the water in, upon, or under the land
30 to the extent provided in the instrument granting the easement.

(3) "Environmental control site" or "site" means any site, including the surface and subsurface of the land and the surface and subsurface resources in, upon, or under the land, including, without limitation, minerals and water that may contain hazardous wastes or substances or that may require remediation, reclamation, or restoration pursuant to federal, state, or local law or regulation.

(4) "Federal public entity" means the United States of America, the United States environmental protection agency, or any other federal government agency or authority and its successors or assigns.

(5) "Governmental order" means a consent decree, judgment, decision, order, agreement, or other requirement authorized or imposed by or under any federal or state law affecting an environmental control site.

(6) "Hazardous wastes or substances" means those hazardous or toxic substances, wastes, materials, pollutants, or contaminants that are defined pursuant to 75-10-403, 75-10-602, and 75-10-702.

(7) "Public body" means the state, counties, cities, towns, and other municipalities.

(8) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) that qualifies and holds a general tax exemption under the federal Internal Revenue Code, 26 U.S.C. 501(c); and

(c) whose organizational purposes are designed to further the purposes of [sections 1 through 19].

NEW SECTION. Section 4. Acquisition of environmental control sites. A public body may acquire by grant, title to, interests in, or rights in environmental control sites.

NEW SECTION. Section 5. Conversion or diversion of environmental control sites. An environmental control site in which an environmental control easement has been granted pursuant to [sections 1 through 19] may not be converted or diverted from purposes specified in the easement instrument or released from any restriction, limitation, or requirement specified in the easement instrument unless the conversion, diversion, or release is:

(1) protective of the public health, safety, and welfare and the environment as determined by the department or the U.S. environmental protection agency that initially approved the easement;

1 (2) permitted by the criteria for modification or termination imposed at the time of the creation
2 of the easement; and

3 (3) approved in writing by the easement holder and any other person named in the easement
4 instrument from whom approval is required.

5
6 **NEW SECTION. Section 6. Conveyance or lease of environmental control sites.** (1) A grantee of
7 an environmental control easement acquired under [sections 1 through 19] may not convey or assign any
8 of the easement rights that the grantee has acquired except to a federal public entity, a public body, or
9 a qualified private organization authorized to hold environmental control easements under [section 11].

10 (2) A grantee of a conveyance pursuant to subsection (1) shall assume the responsibility for
11 enforcing the environmental control easement as specified in the easement instrument and in [section 17].

12
13 **NEW SECTION. Section 7. Public body powers.** In connection with environmental control sites
14 acquired or designated as environmental control easements for the purposes of [sections 1 through 19],
15 a public body may provide, arrange, or contract for the monitoring of the environmental control sites as
16 necessary to ensure that the environmental control sites are being used only for the purposes permitted
17 by the terms of the environmental control easement and are not being used in a manner that is prohibited
18 or restricted by the terms of the environmental control easement.

19
20 **NEW SECTION. Section 8. Creation and approval of environmental control easements.** (1) An
21 environmental control easement may be created under [sections 1 through 19] only if the department or
22 the United States environmental protection agency has approved the creation of an environmental control
23 easement at an environmental control site to protect public health, safety, or welfare or the environment.

24 (2) An owner or an authorized representative of the owner of an environmental control site may
25 apply for approval of a proposed environmental control easement to the department or the United States
26 environmental protection agency.

27 (3) An owner or an authorized representative of the owner of an environmental control site that
28 applies to the department for approval shall complete an environmental control easement application
29 developed by the department.

30 (4) The department shall promptly review the application and either approve the application or

1 provide the applicant with a written statement of the reasons for the department's disapproval.

2 (5) If the application is disapproved for reasons that may be addressed by modification of the
3 easement instrument or by changes to the proposed transaction, the applicant, in consultation with the
4 department, may modify the proposed environmental control easement or the proposed transaction in a
5 manner necessary to obtain department approval and resubmit the application for the department's
6 approval.

7 (6) The department's approval must be evidenced by execution of the instrument creating the
8 environmental control easement, including the execution of a written statement evidencing the approval
9 in recordable form or any other method that reasonably substantiates the required approval.

10

11 NEW SECTION. **Section 9. Duration of environmental control easements.** An environmental
12 control easement may be granted either in perpetuity or for a term of years. If granted for a term of
13 years, that term may not be less than 15 years. An easement granted for a term of years may be
14 renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

15

16 NEW SECTION. **Section 10. Permissible easements.** (1) An environmental control easement under
17 [sections 1 through 19] may prohibit or limit the following activities or uses:

18 (a) constructing or placing of buildings, camping trailers, housetrailer, mobile homes, roads, signs,
19 billboards or other advertising utilities, or other structures on or above the ground;

20 (b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or
21 placing of trash, waste, or unsightly or offensive materials;

22 (c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of
23 specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

24 (d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;

25 (e) using the surface of the land in a particular manner, such as for agricultural, residential,
26 commercial, or industrial uses;

27 (f) subdividing the land, as described in 76-3-103, 76-3-104, and 76-3-202;

28 (g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other
29 activities that may cause erosion or migration of hazardous wastes or substances at or from the
30 environmental control site;

1 (h) drilling or using water wells for potable or nonpotable purposes;

2 (i) other activities or uses detrimental to or interfering with the remediation or cleanup of the
3 environmental control site or detrimental to the preservation of remedial structures, measures, or
4 technologies employed at the environmental control site; and

5 (j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare
6 or the environment.

7 (2) An environmental control easement under [sections 1 through 19] may include or require the
8 following:

9 (a) maintenance of environmental control site remedial structures or other remedial measures, such
10 as soil surfaces, soil caps, berms, fences, or drainage improvements;

11 (b) rights in the holder of the easement or others for continuing access to the site as necessary
12 to implement, operate, maintain, and monitor remedial work and technologies, including operation and
13 maintenance, and to ensure implementation and enforcement of the requirements, restrictions, and
14 limitations specified in the easement instrument;

15 (c) prompt notification to the holder of the easement or others of transfers of all or any portion
16 of an environmental control site or interest in the site or of any proposed changes in land use at the site;

17 (d) compliance with all requirements of any applicable governmental order;

18 (e) arrangements for indemnification or for reimbursement of any costs and expenses of the
19 easement holder or others or other methods of allocating costs and expenses for remedial actions,
20 operations and maintenance, or other activities on the environmental control site or with respect to the
21 site;

22 (f) other obligations that any federal public entity or other public body having jurisdiction over the
23 property determines are necessary to implement, ensure noninterference with, or ensure the protection
24 of remedial work performed under a governmental order; or

25 (g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the
26 public health, safety, or welfare or the environment at environmental control sites.

27
28 **NEW SECTION.** Section 11. Environmental control easement conveyances. (1) The designated
29 grantee of an environmental control easement granted under [sections 1 through 19] is one or more of
30 the following entities:

1 (a) a federal public entity;

2 (b) the state of Montana, acting by and through the department or any other state agency;

3 (c) any other public body having jurisdiction over the environmental control site; or

4 (d) a qualified private organization.

5 (2) A grantee's acceptance of the easement interest and related obligations must be evidenced
6 by the grantee's execution of the instrument creating the environmental control easement.

7 (3) Prior to or contemporaneously with the conveyance of an environmental control easement to
8 a designated grantee, the environmental control site owner shall:

9 (a) obtain documents demonstrating that every person or entity holding an interest in the
10 environmental control site or any part of the site, including without limitation each mortgagee, lienholder,
11 lessee, and encumbrancer, irrevocably subordinates the entity's interest to the environmental control
12 easement;

13 (b) record the documents required under subsection (3)(a) in the appropriate county; and

14 (c) submit those documents required under subsection (3)(a) to the designated grantee.

15 (4) An environmental control easement may not be separated from the land and survives
16 foreclosure of a mortgage, lien, or other encumbrance, as well as tax sales and the issuance of a tax
17 deed.

18
19 **NEW SECTION.** **Section 12. Assignability of easements.** For the purpose of [sections 1 through
20 19], an environmental control easement is assignable unless the instrument of conveyance or ownership
21 expressly provides otherwise. An environmental control easement is not considered unenforceable if the
22 benefits of the easement are assigned to another public body or a qualified private organization unless the
23 assignment has violated the express terms of the instrument creating the easement. An assignee must
24 be qualified under the terms of [sections 1 through 19] to hold an environmental control easement. If an
25 assignment is made in violation of the provisions of this section, the assignment is void and the
26 environmental control easement interests and obligations remain with the assignor.

27
28 **NEW SECTION.** **Section 13. Coordination with local planning authority.** (1) In order to minimize
29 conflict with local comprehensive planning, the entity acquiring the environmental control easement shall
30 provide a copy of the easement to the appropriate local planning authority for the county within which

1 the land lies prior to or concurrently with recording.

2 (2) The requirement in subsection (1) to provide a copy of the environmental control easement to
3 the local planning authority is only for the purposes of informing the authority of the easement.

4 (3) The failure to provide the environmental control easement to the local planning authority, as
5 required in subsection (1), does not invalidate the easement.

6
7 **NEW SECTION.** **Section 14. Recording and description of easement.** (1) An environmental
8 control easement must be recorded in the county where the property is located so as to effect the title
9 in the manner of other conveyances of interest in the property and must describe the property subject
10 to that easement by an adequate legal description or by reference to a recorded plat showing the
11 property's boundaries.

12 (2) The county clerk and recorder shall, upon recording, place a copy of the environmental control
13 easement in a separate file within the office of the county clerk and recorder and shall mail a copy of the
14 easement to the department.

15
16 **NEW SECTION.** **Section 15. Taxation of property subject to easement.** (1) The value of the
17 interest held by a federal public entity, a public body, or a qualifying private organization is exempt from
18 property taxation.

19 (2) Expiration of an environmental control easement granted for a term of years may not result
20 in a reassessment of the land for property tax purposes if the easement is renewed and the granting
21 instrument reflecting the renewed easement is executed and properly filed not later than 15 days after
22 the date of expiration.

23
24 **NEW SECTION.** **Section 16. Easements to run with land.** Notwithstanding 70-17-202 and
25 70-17-203(1) and (2), for the purposes of [sections 1 through 19], an environmental control easement
26 runs with the land, whether or not this fact is stipulated in the instrument creating the easement, and the
27 easement binds the owner of the land and all successors and assigns.

28
29 **NEW SECTION.** **Section 17. Easement enforcement.** (1) Environmental control easements may
30 be enforced by injunction, specific performance, other proceedings in equity or at law, or any other means

1 specified in the instrument creating the easement. In addition to any right specified in the easement
2 instrument, representatives of the holder of the environmental control easement are entitled to enter the
3 land in a reasonable manner and at reasonable times to ensure compliance with the terms and conditions
4 of the easement and to implement, operate, maintain, and monitor all remedial work and technologies.

5 (2) An environmental control easement is not unenforceable because of a lack of privity of estate
6 or contract or a lack of benefit to particular land, because the easement is not an appurtenant easement,
7 or because the easement is an easement in gross.

8 (3) An environmental control easement is enforceable against the owner of the fee and any
9 persons or entities holding or claiming an interest in the property regardless of whether the interest is
10 equal to or less than the whole fee estate.

11 (4) A delay or failure to enforce in any specific instance any violation of an environmental control
12 easement does not preclude or waive the right to enforce against that violation or any other breach.

13 (5) The easement holder may waive, in a writing executed by the easement holder, any single
14 violation of the terms of the environmental control easement without waiving any other prior or
15 subsequent violation whether of the same or different nature. The easement holder may remedy a
16 violation without waiving the violation remedied and is entitled to recover from the environmental control
17 site owner all costs, including but not limited to direct and indirect costs of remedying the violation and
18 costs of any other remedies provided by law or in the easement instrument.

19 (6) A claim or cause of action arising out of or relating to a violation of a term or provision of an
20 environmental control easement must be filed in a court of appropriate jurisdiction within 10 years from
21 the date upon which the party alleging violation of the easement had actual knowledge of the violation.
22

23 NEW SECTION. **Section 18. Who may enforce easement.** (1) The owner of any real property
24 designated as a benefited property in the instrument creating the environmental control easement or the
25 occupant of the benefited real property may maintain an action for enforcement of the easement.

26 (2) A public body or a qualified private organization holding an environmental control easement
27 shall enforce the provisions of the easement.

28 (3) A person or entity specifically named as a beneficiary in the instrument creating the
29 environmental control easement may enforce the provisions of the easement to the extent provided in the
30 instrument.

NEW SECTION. **Section 19. Liability.** (1) The creation and approval of an environmental control easement do not waive or release any statutory liability or other obligation of a person for hazardous wastes or substances at an environmental control site. A federal public entity or public body may enforce any applicable law or obligation without regard to any allocation of liability in an easement instrument and without regard to exhaustion of remedies against any party to an easement instrument.

7 (2) An owner of a site to which the environmental control easement applies and any lessee or
8 licensee of the land are liable for any violation of the provisions of the easement and are jointly and
9 severally liable for abating the violation and for all damages, costs, and attorney fees arising from or
10 attributable to the violation.

(3) Notwithstanding any other provision of law, the holder or other named beneficiary of an environmental control easement or other person enforcing the easement is not liable for hazardous wastes or substances at the environmental control site or for the release of a hazardous or deleterious substance from a facility at the site based upon its ownership of the easement or based upon its maintenance, monitoring, enforcement, or other actions with respect to the easement.

17 NEW SECTION. Section 20. Codification instruction. [Sections 1 through 19] are intended to be
18 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 19].

20 **NEW SECTION. Section 21. Effective date.** [This act] is effective July 1, 1999.

- END -

that is the current fee and was an editorial change the drafters believed to be more appropriate in that section.

Closing by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS, stated this was a compromise between the Department and Wood Products industry which started last June. He urged the committee's support.

{Tape : 2; Side : A; Approx. Time Counter : 31.7 - 34; Comments : None.}

HEARING ON SB 462

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents:

Sandy Stash, Vice President, ARCO

Frank Crowley, ASARCO

Denise Mills, Remediation Division Administrator, Department of
Environmental Quality

Steve Wade, Burlington Northern and Santa Fe Railway

Don Allen, Western Environmental Trade Association

Chris Allen, Montana Chamber of Commerce

Opponents:

Anne Hedges, Montana Environmental Information Center

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, stated SB 462 is a bill that creates environmental control easements. The intent is to create a simple, effective, reliable and permanent mechanism for dealing with hazardous waste and substances that must remain on a site somewhere. Under current law there are some tools available to protect public health, safety and welfare or the environment, such as restrictive covenants and easements but the reliability of this is not always clear. Environmental control easements will be clear, reliable and effective.

This bill is patterned after the Montana Conservation Easement statute and provides for the acquisition of environmental control easements by public entities, either federal, state or local, and by certain qualifying private organizations. The primary purposes of these easements will be to monitor the protection of sites to ensure those sites are not used for purposes that might

threaten the public health, safety and welfare or the environment.

An easement can only be created and implemented if DEQ approves its creation or EPA. This bill provides a specific means for DEQ to do this and it is anticipated that a similar procedure would be instituted with EPA. The approval process is meant to ensure that environmental control easements will not be used for the purpose of shielding companies from their cleanup responsibilities, rather they are to provide a mechanism to limit exposure to hazardous materials by the public, etc., when it is not technologically feasible to remediate the property. This bill tries to limit the exposure to hazardous materials after remediation has been completed and when the remedial structures are in place, i.e. soil caps, drainage structure, etc. There is a lot of flexibility built in to meet the site specific needs of particular sites.

Senate Bill 462 could be a reliable and permanent solution for dealing with hazardous wastes that must remain at a site. He encourages the committee's support.

Proponents' Testimony:

Sandy Stash, Vice President in charge of environmental cleanup, ARCO, stated ARCO has been very involved in both federal and state cleanups for the last decade or more. Two things are very apparent to them: 1) when a cleanup is done, institutional controls or a way to manage the cleanup that has been put in place, is absolutely necessary at every site. 2) No really good mechanism currently exists in state law to deal with these.

This bill requires state approval, it makes companies that have responsibility for these cleanups, full partners with the State of Montana in approving the appropriate mechanism on a forward going basis. ARCO is a strong proponent of the bill and feels it will go a long ways toward improving the cleanups in the State of Montana.

Frank Crowley, ASARCO, stated **HB 331** is a similar bill which authorizes local Boards of Health to adopt institutional controls. Major cleanups were started in this state many years ago. These cleanups are now moving and coming to the end stages. At the end stages, you begin looking for some mechanisms that will both help to protect the environment and public health but also not require total active cleanup. He is impressed with the thought that has gone into the bill on all the various aspects and most especially private property. This bill is not limited to just Superfund sites but it has the same objective which is to

provide, flesh out and complete the types of solutions we need to put these sites finally to a state of total resolution and completion and let the properties move into the future with the cleanups that have been done. He urges support of the bill and thinks it will be an excellent compliment to **HB 331**.

{Tape : 2; Side : A; Approx. Time Counter : 34 - 44.3; Comments : None.}

Denise Mills, Remediation Division Administrator, Department of Environmental Quality, spoke in support of the bill as per **EXHIBIT(10)**.

Steve Wade, Burlington Northern and Santa Fe Railway Company, spoke in support of **SB 462** because it creates an option when cleaning up a site. At the end of the cleanup you want mechanisms established that protect the public and also the environment from people going in and messing with either the remedy or the stuff that is still in the ground. Enforcement of those mechanisms are questionable and unclear. They feel this bill goes a long way in clearing up some of those problems to arrive at the result of protecting the public and the environment.

Don Allen, Western Environmental Trade Associaton, spoke in support of **SB 462**. He feels the reason the bill is needed is to give more options. Buzz words in the bill such as minimizing, likelihood of exposure, preventing, insuring and requiring are all positive words that lead to better solutions, better options and better ideas as people work together to take care of these problems that exist and how to deal with them. The Conservation Easement approach is one more tool for the tool box.

Chris Allen, Montana Chamber of Commerce, spoke in support of **SB 462** because it helps minimize the adverse health effect and exposures and prevents future disturbances.

Opponents' Testimony:

Anne Hedges, Montana Environmental Information Center, stated she was a weak opponent because she felt there were things that could be done to the bill to cause her not to oppose it. Whenever there is an institutional control bill they view it with a wary eye as it means contamination will be left in place. They want to make sure there are enough safeguards in place to guarantee the protection of the public and adequate notification of the public. Some of her concerns dealt with allowing qualified private organizations to hold these easements as opposed to just government entities. They feel the requirements of a qualified

private organization are not very strong and they want to ensure there are enough safeguards in place that the public will be protected throughout the whole easement term. They also feel there needs to be some type of public notification for those people who have expressed an interest in the site regarding the contamination and that an easement is being put into place and the terms. In New Section 9 it says "may" be renewed at the end of 15 years, why would you not want to renew it if a threat does not exist? She is also concerned with an easement holder responsible for enforcing violations of the easement. This is why there is concern for the private entity holding the easement and feels the public sector would be better to control the easement. When there is a violation there is no mechanism for the state to know about that violation and if held by the state it is all public documentation with access to the information.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 14.8; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COLE questioned how many sites or easements are in the state? **Ms. Mills** stated under the state Superfund law they have established institutional controls at 16 of 289 sites. They are trying to look at institutional controls as part of a final remedy at more sites. Currently there are about 180-200 sites on their state Superfund list so anywhere from 1/3 to 1/2 more could have an institutional control. Whether they would all be easements would be uncertain. This bill provides a mechanism for implementing an enforceable institutional control. **SEN. COLE** questioned if these only applied to Superfund areas? **Ms. Mills** said the intent of this legislation is not to be constrained to the Superfund laws but an environmental control easement would be established as part of a process that is approved by an agency.

SENATOR McCARTHY questioned the rationale on the term of 15 years as well as "shall" be renewed in Section 9. **Ms. Stash** stated the term of 15 years comes right out of the Conservation Easement statute. In originally drafting this bill they tried to parallel existing law as much as possible. Regarding "shall", something that would say "where the threat no longer exists" would be a very appropriate add on. In some instances a particular site may not need these in perpetuity and they wanted the option not to have them if they were no longer needed. **SEN. McCARTHY** regarding page 7, Section 13, who is the local point person who coordinates with local planning authority? **Ms. Stash** stated in most local jurisdictions it would be the planning director.

SENATOR MAHLUM questioned Section 10, lines 16-19, and asked for an explanation of what would happen? **SENATOR GROSFIELD** stated the list was a variety of tools that may be used with advertising being one. Digging a hole for a sign post could be of concern on some sites. He was not certain if there was any other reason they were talking about advertising there. **SEN. MAHLUM** stated the majority of signs would be within 100 feet of a roadway where they would be visible to passing people. He would be concerned if this particular wordage were to preclude where advertising could be done. Is there some way they can be assured this would not be a problem? **SEN. GROSFIELD** stated he thought the key was on line 17 with the word "may" which applies to the whole list. In this context it means "may prohibit" not "shall prohibit".

Closing by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, stated he felt **Ms. Hedges** had made several good points in her testimony. The changes she requested were not real significant and, in some cases, were meant to be part of the bill and, in other cases, were oversight. The proponents of the bill are more than willing to address each point she brought up to improve the bill.

The bottom line is how do you protect what you have done after spending the money for cleanup and remediation. This bill addresses how to protect what you have done. It is a good bill and he hoped the committee would see likewise.

EXECUTIVE ACTION ON SB 412

Motion/Vote: **SEN. COCCHIARELLA** moved that **SB 412 DO PASS**. Motion carried 9-0.

{Tape : 2; Side : B; Approx. Time Counter : 14.8 - 27.4; Comments : None.}

country. Education regarding how should we act with our irrigation structures, are there better ways to do it and more environmentally sound methods to do it. He appreciates the Department for standing their ground on this issue because it has been a very effective program.

This legislation does provide for an appropriate answer to the EPA letters. He is pleased Mr. Wardell is here.

He pointed out there is a lot of good news in these letters and if there has been some apprehension about whether or not EPA is going to disapprove this or that, we now have it on record that EPA approves most of what we have done with the exception of some narrow areas most of which are addressed in this bill. If everyone continues to work together on these issues, hopefully we will end the session with a good resolution on this issue.

{Tape : 1; Side : B; Approx. Time Counter : 20.2 - 34.8; Comments : None.}

EXECUTIVE ACTION ON SB 313

Motion/Vote: SEN. MAHLUM moved that SB 313 BE TABLED. Motion carried 9-2 with SEN. MILLER AND SEN. COCCHIARELLA voting no.

EXECUTIVE ACTION ON SB 411

Motion: SEN. COLE moved that SB 411 DO PASS.

Motion/Vote: SEN. COLE moved that SB 344 AMENDMENTS SB041101.ALM DO PASS. Motion carried 11-0. EXHIBIT(3)

Motion/Vote: SEN. GROSFIELD moved that SB 411 DO PASS AS AMENDED. Motion carried 11-0.

{Tape : 1; Side : B; Approx. Time Counter : 34.8 - 44; Comments : None.}

EXECUTIVE ACTION ON SB 462

Motion: SEN. GROSFIELD moved that SB 462 DO PASS.

Motion: SEN. GROSFIELD moved that SB 462 AMENDMENTS SB046201.ALM DO PASS. EXHIBIT(4)

Vote: Motion carried 11-0.

Motion: SEN. GROSFIELD moved that SB 462 AMENDMENTS SB046202.ALM DO PASS. EXHIBIT(5)

Vote: Motion carried 11-0.

Motion/Vote: SEN. GROSFIELD moved that SB 462 DO PASS AS AMENDED. Motion carried 10-1 with SEN. WILSON voting no.

EXECUTIVE ACTION ON SB 465

Motion/Vote: SEN. MILLER moved that SB 465 BE TABLED. Motion carried 10-1 with SEN. COCCHIARELLA voting no.

EXECUTIVE ACTION ON SB 492

Motion/Vote: SEN. GROSFIELD moved that SB 492 DO PASS. Motion carried 11-0.

EXECUTIVE ACTION ON SB 499

Motion: SEN. GROSFIELD moved that SB 499 DO PASS.

Motion: SEN. GROSFIELD moved to amend SB 499 PAGE 2, LINE 18 BY STRIKING "IDENTIFIABLE".

Vote: Motion carried 11-0.

Motion: SEN. MAHLUM moved that SB 499 DO PASS AS AMENDED.

Discussion:

SENATOR COCCHIARELLA stated EQC had considered an emergency meeting to respond to the letter from EPA and further questioned if we were not to pass this bill what else is out there to respond and fix the problem in dealing with EPA's letter? SEN. GROSFIELD stated there was not other legislation in the works to deal with this. Some of the issues could be dealt with in terms of rule but some do need statutory tweaking.

Vote: Motion carried 9-1 with SEN. WILSON voting no.

Mike Murphy, Montana Water Resources Association, said this was a well negotiated compact with excellent representation. {Tape : 1; Side : B; Approx. Time Counter : 7 - 7.5}

Opponents: None.

Questions from Committee Members and Responses: {Tape : 1; Side : B; Approx. Time Counter : 7.5 - 13.5}

Closing by Sponsor: Sen. Swysgood closed. He noted how the bill addressed all concerns of those in the area. The compact recognized rights that were subordinate and the ranchers were satisfied.

EXECUTIVE ACTION ON SENATE BILL 216

Rep. Curtiss **MOVED DO CONCUR** SB 216. Rep. Tuss **MOVED** an amendment. The question was called on the amendment. The motion **PASSED** unanimously. Rep. McGee **MOVED** an amendment to have a comma after section 24. The question was called on the McGee amendment. The motion **PASSED** unanimously. Rep. Tuss **MOVED DO CONCUR AS AMENDED**. The question was called. The motion **PASSED** 19-1 with Rep. Wagner voting no. {Tape : 1; Side : B; Approx. Time Counter : 15.1 - 18.2}

HEARING ON SENATE BILL 462

Sponsor: Sen. Lorents Grosfield, SD 13, presented the bill. He explained the bill dealt with environmental control easements. {Tape : 1; Side : B; Approx. Time Counter : 19.1 - 23.7}

Proponents: Steve Pilcher, representing ARCO in support of SB 462. He presented a fact sheet regarding environmental control easements. **EXHIBIT(4)** {Tape : 1; Side : B; Approx. Time Counter : 23.7 - 25}

Don Allen, Western Environmental Trade Association, said this bill provided another option and tools. {Tape : 1; Side : B; Approx. Time Counter : 27.9 - 28.8}

Denise Mills, the Remediation Division Administrator at the Department of Environmental Quality, presented written testimony. **EXHIBIT(5)** {Tape : 1; Side : B; Approx. Time Counter : 28.8 - 36}

Jill Andrews, representing the Montana Mining Association, described the Old Works Golf Course in Anaconda, as a good example of environmental controls as a solution to the problem.

{Tape : 1; Side : B; Approx. Time Counter : 36 - 36.3}

Steve Wade, spoke on behalf of Burlington Northern Santa Fe Railway Company, in support of SB 462. He said they had learned from cleaning up sites that at the end of the cleanup, you need enforceable mechanisms to protect the remedy or to restrict access for future use of those properties. **{Tape : 1; Side : B; Approx. Time Counter : 36.3 - 37}**

Chris Gallus, representing the Montana Chamber of Commerce, spoke in support of the bill. **{Tape : 1; Side : B; Approx. Time Counter : 37 - 37.7}**

Informational Witness: Anne Hedges, representing Montana Environmental Information Center, spoke about a private entity holding an easement. She believed government should control this so the citizens health was protected. She pointed out a risk may still exist at the end of the term of the easement and this should be evaluated. **{Tape : 1; Side : B; Approx. Time Counter : 37.7 - 40.7}**

Opponents: None.

Questions from Committee Members and Responses: **{Tape : 1; Side : B; Approx. Time Counter : 40.7 - Tape : 2: A; Approx. Time Counter : 24}**

Closing by Sponsor: Sen. Grosfield closed. He pointed out positive results such as the fairground baseball fields over a landfill. He said institutional controls were realistic. **{Tape : 2; Side : A; Approx. Time Counter : 24 - 30.3}**

EXECUTIVE ACTION ON SENATE BILL 429

Rep. McGee **MOVED TO TABLE.** The question was called. The motion **PASSED 11-9.** **{Tape : 2; Side : A; Approx. Time Counter : 32.2 - 34}**

EXECUTIVE ACTION ON SENATE BILL 276

Rep. McGee **MOVED DO CONCUR.** The question was called. The motion **PASSED** unanimously. **{Tape : 2; Side : A; Approx. Time Counter : 34 - 36}**

narrow windows of opportunities now. The question was called. The motion **PASSED** 20-0. {Tape : 2; Side : B; Approx. Time Counter : 46.4 - 54}

EXECUTIVE ACTION ON SENATE BILL 462

Rep. Younkin **MOVED DO CONCUR**. The Raney amendments were distributed. **EXHIBIT(10)** He **MOVED** the amendments. He pointed out the need to look at this after the 15 year period. {Tape : 2; Side : B; Approx. Time Counter : 55.5}

Bill Curley explained the public notice provision that is routinely done. He pointed out that even under CECRA this amendment may require a separate comment period for the easement. The party responsible would apply for this as part of a remedy and the department is required, promptly, to hold a public comment period. {Tape : 3; Side : A; Approx. Time Counter : 2.5}

Rep. Raney said amendment number one could say "upon receiving a completed application and following public notice, the department shall allow for a thirty day public comment period". He **MOVED THIS SUBSTITUTE AMENDMENT**.

Rep. Ohs commented that this would allow for two separate comment periods and two separate notices. Rep. Raney said these comment periods could be years apart, since this is near the final remedy period. {Tape : 3; Side : A; Approx. Time Counter : 2.5 - 3.7}

The question was called on the substitute Raney amendment. The motion **PASSED** with Reps. Stovall, Ohs, Tash and Dale voting no.

Rep. Younkin presented an amendment. She **MOVED DO CONCUR AS AMENDED**. Rep. Raney asked why any public body would want to acquire rights in an environmental control site and take on that responsibility. Director Simonich said it made sense for the governing body to acquire because there may be long term maintenance requirements of the site. {Tape : 3; Side : A; Approx. Time Counter : 3.7 - 11}

Rep. Harper pointed out allowing local government to control an environmental control easement is the burden that runs with the land. {Tape : 3; Side : A; Approx. Time Counter : 22.7 -23.5}

Rep. Younkin **WITHDREW** the amendment. {Tape : 3; Side : A; Approx. Time Counter : 22.7 - 24}

Rep. Erickson distributed an amendment. **EXHIBIT(11)** He **MOVED** the amendment which was #46201. He explained this addressed concerns about remediation, reclamation or restoration knowing that there are already good laws that say the land has to be reclaimed. He was afraid the idea of an institutional control would be used on lands that already have reclamation bonds. Rep. Younkin asked if this would prevent an environmental control as part of an overall reclamation plan that would be ultimately bonded. Todd Everts responded that under this act for this type of environmental control easement, yes it would prohibit it.

Rep. Mood asked why would the fact that a site had been bonded be precluded the use of this tool in remediation. Rep. Erickson replied that reclamation had already been bonded and should be held to. Rep. McGee pointed out an easement was an encumbrance on the ground but not necessarily a remediation. It is a legal status of the land. If I own the land and am bonded for it, why couldn't I also have an easement on that land. Remediation is a legal status, the work can still be done. Rep. Erickson said he was tying it to the law that talks about reclamation, needing to be done, and arguing that if you already have a plan you can't suddenly change it into a golf course. Rep. Tash felt existing law would regulate this.

Rep. Dale said there were numerous cases where changes in times and situations you would want to have the flexibility to reclaim something to the highest use. For example, it wouldn't make sense to spend \$30 thousand dollars reclaiming an acre that is worth \$250 dollars. **{Tape : 3; Side : A; Approx. Time Counter : 24 - 30}**

Rep. Younkin pointed out the whole idea was to protect public health with an environmental control easement on an area that has been reclaimed as much as it can be reclaimed. This is not a way for a polluter to avoid having to clean up. There is nothing in this bill that supercedes the State Superfund Law or federal CERCLA law. These laws still must be complied with. She noted that the Erickson amendment if you are going to have a bonded reclamation site you can't have an environmental control easement on top of that. **{Tape : 3; Side : A; Approx. Time Counter : 30 - 33}**

Rep. Erickson said he was trying to amend the definition section. It says an environmental control site which means any site that may require reclamation, which is pretty broad. He worried this would allow a site that required reclamation to have an environmental control site instead. **{Tape : 3; Side : A; Approx. Time Counter : 32.1 - 33.8}**

Rep. Ohs said he was against the amendment because it stops institutional controls and stops the intent of the bill.

The question was called on the Erickson amendment. The motion **FAILED** 13-7. {Tape : 3; Side : A; Approx. Time Counter : 33.8 - 38.5}

Rep. Younkin explained this bill did not allow avoidance of CERCA. This would give the department, the state and neighbors to a polluted site, an additional tool to use to make sure that public health and safety are going to be protected. You can only do so much to get something clean. It still may not be appropriate to use that land for some uses.

The question was called on the SB 462 as amended. The motion **PASSED** 15-5 on a roll call vote. {Tape : 3; Side : A; Approx. Time Counter : 38.5 - 44.3}

EXECUTIVE ACTION ON SENATE BILL 383

Rep. Tash **MOVED TO RECONSIDER** SB 383. He felt it was apparent that during the executive action the actions were on the amendments rather than on the bill. He said this was the cluster development bill. The question was called. The motion **FAILED** 12-8 on a roll call vote. {Tape : 3; Side : A; Approx. Time Counter : 44.3 - 47.4}

EXECUTIVE ACTION ON SENATE BILL 345

Rep. Dale **MOVED TO RECONSIDER** SB 345, off the table. The motion **PASSED** 11-9 on a roll call vote.

Rep. Dale **MOVED DO CONCUR**. Rep. Dale presented amendments. **EXHIBIT(12)** He **MOVED** the amendments. He discussed the need to reconsider the bill. There were differences between urban interests and rural interests in our state. There seemed to be a bigger gap between the urban communities who were producers of services and sellers of services and goods and the rural communities that were the producers of resources. This issue is one of private property rights and protecting our state from a process that was influenced in the way the proponents of I-137 claimed the process was being influenced. He felt that not all the information was put before the public such as the fiscal statement, which was information that was withheld that would have given the voters of Montana a much clearer look at what this vote could cost them. School equalization funding was not discussed at all. Every site is different. Every mineral regime